

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF INDIANA

Stephen R. Ludwig, Clerk

www.innd.uscourts.gov

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NOTICE OF NEW AND RESTYLED FORMS

The Administrative Office of U.S. Courts has announced that their Forms Working Group has rewritten most of the civil and criminal forms in simple, modern English and also added some forms. This restyling project was modeled on the recent restyling of both the Civil and Criminal Rules of Procedure.

There is a list of 56 new and restyled civil and criminal forms that have been issued for national use which are now posted at the www.uscourts.gov website. We have a hyperlink to the forms on that website at our court's website at www.innd.uscourts.gov

The Forms Working Group will be meeting again and would welcome comments or suggestions regarding any forms, including those recently restyled or added. Forms-related comments, suggestions or samples should be submitted in **writing by March 23, 2009** to Wallace Bell/DCA/AO/USCOURTS, AO Forms Manager.

Following are some of the more significant form changes:

- **Sworn Certification of Inventories Before Magistrate Judges:** For decades, the national search and seizure warrant forms (AO 93, AO 93A, AO 109) have required the officer who executes a warrant to swear before the magistrate judge who issued the warrant as to the accuracy of the inventory of property taken. The Working Group discovered, though, that Fed. R. Crim. P. 41(f)(1) mandates only that the warrant and inventory be “verified” and “returned” to the designated judge. There is no requirement in the rule or elsewhere that the return and inventory be sworn to before a judge.¹ The Judicial Conference Advisory Committee on Criminal Rules and the AO’s Magistrate Judges Advisory Group were consulted on the matter and support amending the forms to reflect that fact.

¹ The basic procedures governing the return of search warrants and the preparation of inventories of property seized have not substantively changed since 1946, when the original Fed. R. Crim. P. 41 took effect. The requirement that inventories be sworn before a judge seems to be derived from 18 U.S.C. former §§ 611-633 (June 15, 1917, c. 30, Title XI, 40 Stat. 228), the statute that governed the issuance of federal search warrants from 1917 to 1946. On its face, former § 623 required the officer who prepared the inventory to swear before the judge or commissioner at the time of the return. But in 1948, Congress repealed that statute, replacing it with the specific provisions of Fed. R. Crim. P. 41(d).

- **Delayed-Notice Option Added on Warrant Forms:** Delayed-notice checkboxes have been added to all relevant warrant and warrant application forms (AO 93, AO 93A, AO 102, AO 104, AO 106, AO 109). This change will allow the agent to include a request for delayed notice with the request for the warrant. It will also ensure that court staff are aware that delayed notice has been requested so that they can record it in the InfoWeb delayed-notice tracking system.

- **Changes to Forms Relating to Appearance Bonds:** Forms AO 98 and AO 98A have been consolidated, and all personal identifiers have been removed in light of the privacy protections of Fed. R. Crim. P. 49.1. Instead, the personal identifiers have been moved to two newly created information sheets — AO 100A “Bail Information Sheet” and AO 100B “Surety Information Sheet” — which are not to be included in the public case file unless redacted or under seal.

- **Illustrative Rules Forms:** The caption style on all forms has been revised to comply with illustrative Civil Rules Form 1 as restyled in 2007. (It appears in the “Appendix of Forms” accompanying the [Federal Rules of Civil Procedure](#).) Also, the content of several AO forms was restyled based on the 2007 illustrative forms:
 - < AO 398 Notice of a Lawsuit and Request to Waive Service of a Summons (cf. Form 5)
 - < AO 399 Waiver of the Service of Summons (cf. Form 6)
 - < AO 440 Summons in a Civil Action (cf. Form 3)
 - < AO 441 Summons on a Third-Party Complaint (cf. Form 4)
 - < AO 450 Judgment in a Civil Action (cf. Forms 70 and 71)

- **Merger of Form AO 466A and AO 466B:** Form AO 466B has been merged into form AO 466A “Waiver of Rule 5 & 5.1 Hearings (Complaint or Indictment),” and form AO 466B has been eliminated.

- **Forms Eliminated or Updated:** Forms AO 156 and AO 456 have been eliminated, and form AO 133 was updated to reflect recent statutory changes.

In addition to restyling existing forms, the Working Group also supplemented the national inventory of civil and criminal forms with a few **new entries**:

- **New Civil Subpoena Forms:** There are now three civil subpoena forms:
 - < AO 88 Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action

- < AO 88A Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action
- < AO 88B Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises
- **New Tracking Warrant Forms:** After extensive evaluation and study during the last two years, the Group has created three national tracking warrant forms.
 - < AO 102 Application for a Tracking Warrant
 - < AO 103 Order Requiring Assistance in Executing a Tracking Warrant
 - < AO 104 Tracking Warrant

The Department of Justice has raised concerns that these forms might be used in situations that it deems inappropriate (e.g., government acquisition of cell phone location information). It notes that whether certain objects are “tracking devices” within the meaning of Fed. R. Crim. P. 41 and 18 U.S.C. § 3117(b) is not yet settled in the case law (see, e.g., *In the Matter of an Application of the United States*, Misc. No. 08-308, 2008 WL 5082506 (E.D.N.Y. Nov. 26, 2008)). The Working Group believes that it is appropriate to issue the forms now because courts have asked for them and they are clearly useful and suitable in a majority of instances. The Working Group takes no position on any substantive legal issue and expresses confidence that courts will authorize the use of the forms only in situations that a judge deems appropriate. The Advisory Committee on Criminal Rules is being asked to discuss the concerns of the Department of Justice and any others at its next meeting, on April 6-7, 2009.

- **New Long Version of *In Forma Pauperis* Application Form:** Also at the request of judges, a new longer *in forma pauperis* application form has been created for use in district court proceedings where form AO 240 is deemed insufficiently detailed. This longer form is based on official Form 4 of the Federal Rules of Appellate Procedure, used in connection with an appeal. Form AO 240 may continue to be used when a court prefers a shorter version.

- **New Arrest Warrant Forms:** In addition to the main arrest warrant form (AO 442) and the two arrest warrants used in connection with violation notices (AO 234 and AO 238), there are now three arrest warrants for witnesses:
 - < AO 443 Warrant for the Arrest of a Witness or Material Witness in a Pending Criminal Case
 - < AO 444 Warrant for the Arrest of a Witness in a Grand Jury

Proceeding
< AO 445 Warrant for the Arrest of a Witness in a Civil Action

List of New and Restyled Forms

AO 83 Summons in a Criminal Case
AO 85 Notice, Consent, and Reference of a Civil Action to a Magistrate Judge
AO 85A Notice, Consent, and Reference of a Dispositive Motion to a Magistrate Judge
AO 86A Consent to Proceed Before a Magistrate Judge in a Misdemeanor Case
AO 88 Subpoena to Appear and Testify at a Hearing or Trial in a Civil Action
AO 88A **[new]** Subpoena to Testify at a Deposition or to Produce Documents in a Civil Action
AO 88B **[new]** Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises
AO 89 Subpoena to Testify at a Hearing or Trial in a Criminal Case
AO 90 Subpoena to Testify at a Deposition in a Criminal Case
AO 91 Criminal Complaint
AO 93 Search and Seizure Warrant
AO 93A Search and Seizure Warrant on Oral Testimony
AO 94 Commitment to Another District
AO 98 Defendant's Appearance Bond **[merges forms AO 98 and AO 98A]**
AO 99 Appearance Bond of Witness
AO 100 Agreement to Forfeit Property to Obtain a Defendant's Release
AO 100A **[new]** Bail Information Sheet
AO 100B **[new]** Surety Information Sheet
AO 102 **[new]** Application for a Tracking Warrant
AO 103 **[new]** Order Requiring Assistance in Executing a Tracking Warrant
AO 104 **[new]** Tracking Warrant
AO 106 Application for a Search Warrant
AO 108 Application for a Warrant to Seize Personal Property Subject to Civil Forfeiture
AO 109 Warrant to Seize Personal Property Subject to Civil Forfeiture
AO 110 Subpoena to Testify Before a Grand Jury
AO 115 Petition for a Change in Name by an Applicant for Citizenship
AO 190 Record of the Number of Grand Jurors Concurring in an Indictment
AO 191 Report of a Grand Jury's Failure to Concur in an Indictment
AO 234 Notice to Appear and Arrest Warrant
AO 234A Notice to Appear in Court on a Violation Notice
AO 238 Arrest Warrant and Notice Before Arrest
AO 239 **[new]** Application to Proceed in District Court Without Prepaying Fees or Costs

(Long Form)

AO 240 Application to Proceed in District Court Without Prepaying Fees or Costs (Short Form)

AO 240A Order to Proceed Without Prepaying Fees or Costs

AO 246 Probation Order Under 18 U.S.C. § 3607

AO 246A Order of Discharge and Dismissal Under 18 U.S.C. § 3607(a)

AO 246B Order for a Presentence Investigation and Report

AO 249 Drug Offender's Reinstatement of Federal Benefits

AO 398 Notice of a Lawsuit and Request to Waive Service of a Summons

AO 399 Waiver of the Service of Summons

AO 440 Summons in a Civil Action

AO 441 Summons on a Third-Party Complaint

AO 442 Arrest Warrant

AO 443 Warrant for the Arrest of a Witness or Material Witness in a Pending Criminal Case

AO 444 **[new]** Warrant for the Arrest of a Witness in a Grand Jury Proceeding

AO 445 **[new]** Warrant for the Arrest of a Witness in a Civil Action

AO 450 Judgment in a Civil Action

AO 451 Clerk's Certification of a Judgment to be Registered in Another District

AO 455 Waiver of an Indictment

AO 458 Appearance of Counsel

AO 466 Waiver of Rule 32.1 Hearing (Violation of Probation or Supervised Release)

AO 466A Waiver of Rule 5 & 5.1 Hearings (Complaint or Indictment) **[merges forms AO 466A and AO 466B]**

AO 467 Order Requiring a Defendant to Appear in the District Where Charges are Pending and Transferring Bail

AO 468 Waiver of a Preliminary Hearing

AO 470 Order Scheduling a Detention Hearing

AO 471 Order to Detain a Defendant Temporarily Under 18 U.S.C. § 3142(d)